

LOCAL GOVERNMENT

BULLETIN 21

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HOLIDAYS AND TIME CALCULATIONS

Ontario Ministry of Intergovernmental Affairs

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To the Municipal Clerk:

Please circulate this bulletin or make copies for distribution to councillors or staff of your municipality who may be interested in the subject. Additional copies are available at fifty cents each from the Publications Centre (see page 9).

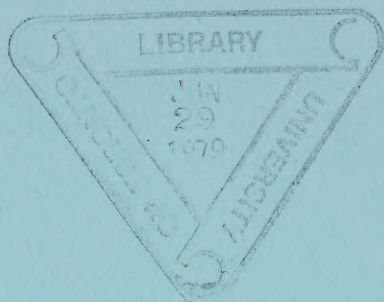



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INTRODUCTION

Occasionally, the clerk of a municipality is asked whether or not a particular holiday affects the hours of operation of a retail business in the municipality or, in a somewhat related vein, clerks are asked about the effect of holidays on the giving of notices required in the carrying out of various activities provided for in the statutes.

This bulletin will examine the legislation affecting these two areas of holidays and time calculations and, where possible, provide answers.

While we have tried to quote the various statutory provisions faithfully, you should refer to the official statutes to ensure accuracy. Also, we suggest that you consult a solicitor about any problems that arise in interpreting or applying any of the statutory provisions.

FEDERAL	PROVINCIAL	
THE INTERPRETATION ACT	THE INTERPRETATION ACT	THE RETAIL BUSINESS HOLIDAYS ACT 1975
<p>SUNDAY</p> <p>NEW YEAR'S DAY</p> <p>GOOD FRIDAY</p> <p>EASTER MONDAY</p> <p>VICTORIA DAY</p> <p>DOMINION DAY</p> <p>LABOUR DAY</p> <p>THANKSGIVING DAY</p> <p>REMEMBRANCE DAY</p> <p>CHRISTMAS DAY</p> <p>--</p>	<p>SUNDAY</p> <p>NEW YEAR'S DAY</p> <p>GOOD FRIDAY</p> <p>EASTER MONDAY</p> <p>VICTORIA DAY</p> <p>DOMINION DAY</p> <p>LABOUR DAY</p> <p>--</p> <p>REMEMBRANCE DAY</p> <p>CHRISTMAS DAY</p> <p>--</p>	<p>SUNDAY</p> <p>NEW YEAR'S DAY</p> <p>GOOD FRIDAY</p> <p>--</p> <p>VICTORIA DAY</p> <p>DOMINION DAY</p> <p>LABOUR DAY</p> <p>THANKSGIVING DAY</p> <p>--</p> <p>CHRISTMAS DAY</p> <p>BOXING DAY</p>
<p>- the birthday or the day fixed by proclamation for the celebration of the birthday of the reigning Sovereign,</p> <p>- any day appointed by proclamation to be observed as a day of general prayer or mourning or day of public rejoicing or thanksgiving,</p> <p>- and any of the following additional days, namely:</p> <p>(a) in any province, any day appointed by proclamation of the lieutenant governor of the province to be observed as a public holiday or as a day of general prayer or mourning or day of public rejoicing or thanksgiving within the province, and any day that is a non-judicial day by virtue of an Act of the legislature of the province, and</p> <p>(b) in any city, town, municipality or other organized district, any day appointed as a civic holiday by resolution of the council or other authority charged with the administration of the civic or municipal affairs of the city, town, municipality or district;</p>	<p>- the birthday or day fixed by proclamation of the Governor General for the celebration of the birthday of the reigning Sovereign,</p> <p>- any day appointed by proclamation of the Governor General or Lieutenant Governor as a public holiday or for a general fast or thanksgiving.</p> <p>NOTE - The Provincial Legislation provides that when any holiday, except Remembrance Day, falls on a Sunday, the day next following is in lieu thereof a holiday.</p>	<p>- any other public holiday declared by proclamation of the Lieutenant Governor to be a holiday for the purposes of The Retail Business Holidays Act, 1975.</p>

Definition of Holiday

The chart opposite sets out "holidays" as defined in The Retail Business Holidays Act, 1975 and The Interpretation Act of Ontario as well as those referred to in the Federal Interpretation Act.

As can be observed, the definitions are not identical. For example, Boxing Day is not a holiday as defined in The Interpretation Act of Ontario but is a holiday for the purposes of The Retail Business Holidays Act, 1975. In addition, other pieces of legislation, such as The Employment Standards Act, specifically define the holidays covered by the individual statute.

Retail Business Closings

The closing on holidays of most retail businesses in Ontario is regulated by The Retail Business Holidays Act, 1975, and by any by-law passed by the municipality under section 355(8) of The Municipal Act. There are provisions in The Retail Business Holidays Act, 1975, that allow certain types of convenience outlets to remain open on holidays as well as some businesses related to the tourist industry.

Section 355(8) of The Municipal Act states:

"The council of a city, town or village may by by-law require that all or any class or classes of shops in the municipality shall be closed and remain closed on all or any of the following days:

1. Any holiday as defined in The Interpretation Act.
2. Boxing Day
3. Any day proclaimed by the head of the council of a local municipality as a civic holiday".

Section 6 of The Retail Business Holidays Act states:

"Any provision of any other Act empowering a municipality to regulate the closing or the hours of operation of a retail business

does not include the power to permit the carrying on of the retail business on a holiday where to do so is prohibited by this Act, but nothing in this Act shall be construed to affect any power conferred on a municipality to prohibit the carrying on of a retail business on a day when the carrying on of the retail business is not prohibited by this Act".

This section prevents a municipality from passing a by-law allowing the operation of a retail business on a holiday when it is prohibited by The Retail Business Holidays Act, 1975.

A municipality may, however, prohibit the operation of a retail business on a legal holiday other than those listed in The Retail Business Holidays Act, 1975,

i.e. Remembrance Day
Easter Monday
Any day proclaimed by the head of the council of a municipality as a civic holiday, traditionally the first Monday in August.

In order for a municipal clerk to reply to an inquiry about the closing of a retail business on a holiday, he must check the municipality's by-laws and The Retail Business Holidays Act, 1975, and any amendments to them.

Notices - Effect of Holidays

The clerk is often required by statute to give notice of meetings, hearings and decisions. Usually the statute requiring that notice be given merely states that the clerk shall, for example, give 10 days notice by publishing in a newspaper having a general circulation in the municipality.

What effect do holidays have on the calculation of the number of days for notices?

There appears to be no general restriction prohibiting the inclusion of holidays in the calculation of time for notices; however, care should be taken to ensure that the legislation requiring the notice does not include such a restriction.

An example of such restriction that affects only a part of an act appears in section 638 of The Municipal Act and is set out as follows:

"Where the municipal offices in a municipality are closed on a Saturday and the time limited for any proceeding or for the doing of anything in such municipal offices under this Part expires or falls upon a Saturday, the time so limited shall extend to and the thing may be done on the day next following that is not a holiday".

Most municipal offices are closed on Saturdays so the time calculation must be extended until Monday, "the next day following" being Sunday and a holiday.

An awareness of this provision by the clerk may allow him to adjust his notices to avoid having a deadline fall on a Saturday in the first place.

Notices - Time Calculations

It should be remembered that in most cases the statutory requirement for giving notice specifies the minimum time. Simply providing additional days' notice may avoid citizen complaints about insufficient time due to holidays intervening.

While on the subject of notices, paragraph 23 of section 30 of The Interpretation Act may be worth noting:

"month" means a calendar month;

Occasionally a statute will provide that some activity must take place within a certain number of months from the first publication. For example, in the process of promulgation of by-laws application to quash must be made within three months after the first publication. If the first publication was the 15th of April, then the period would extend to the 14th of July. The number of days in each month is not taken into account.

Also of importance in preparing notices is the need to define the time of day, as in the setting of a deadline for filing objections. The Time Act states:

"1. Where an expression of time occurs in any Act, proclamation, regulation, order in council, rule, order, by-law, agreement, deed or other instrument, heretofore or hereafter enacted, made or executed, or where any hour or other point in time is stated either orally or in writing, or any question as to time arises, the time referred to or intended shall, unless it is otherwise specifically stated, be held to be time reckoned as standard time.

2. (1) Standard time in the part of Ontario that lies east of the meridian of 90°W. longitude shall be reckoned as five hours behind Greenwich time.

(2) Standard time in the part of Ontario that lies west of the meridian of 90°W. longitude shall be reckoned as six hours behind Greenwich time.

(3) The Lieutenant Governor in Council may make regulations varying the reckoning of standard time as fixed by subsection 1 or 2.

Where the municipality is operating on a daylight-time basis, it is important to follow the numerical time specified in the notice with the designation E.D.T. or C.D.T. as the case may be.

Care should be exercised to consider exemptions to The Time Act such as that contained in section 120 of The Municipal Elections Act as amended.

The Federal Interpretation Act contains an interesting provision relating to the computation of time. The Ontario Interpretation Act does not contain a similar provision and while municipalities are generally subject only to the provisions of The Ontario Interpretation Act, an awareness of the Federal provisions may be beneficial. The Clerk may wish to consider these provisions and principles

in the design of any notice for which he is responsible. Following is an extract of the Federal Interpretation Act:

25. (1) Where the time limited for the doing of a thing expires or falls upon a holiday, the thing may be done on the day next following that is not a holiday.

(2) Where there is a reference to a number of clear days or "at least" a number of days between two events, in calculating the number of days there shall be excluded the days on which the events happen.

(3) Where there is a reference to a number of days, not expressed to be clear days, between two events, in calculating the number of days there shall be excluded the day on which the first event happens and there shall be included the day on which the second event happens.

(4) Where a time is expressed to begin or end at, on or with a specified day, or to continue to or until a specified day, the time includes that day.

(5) Where a time is expressed to begin after or to be from a specified day, the time does not include that day.

(6) Where anything is to be done within a time after, from, of or before a specified day, the time does not include that day.

(7) Where there is a reference to a period of time consisting of a number of months after or before a specified day, the number of months shall be counted from, but not so as to include, the month in which the specified day falls, and the period shall be reckoned as being limited by and including

(a) the day immediately after or before the specified day, according as the period follows or precedes the specified day; and

(b) the day in the last month so counted having the same calendar number as the specified day, but if such last month has no day with the same calendar number, then the last day of that month.

(8) Where there is a reference to time expressed as a specified time of the day, the time shall be taken to mean standard time.

(9) A person shall be deemed not to have attained a specified number of years of age until the commencement of the anniversary, of the same number, of the day of his birth.

Summary

In matters of retail-business closings, reference should be made to The Retail Business Holidays Act, 1975, and the Municipality's by-laws. As far as notices are concerned, it appears that there are no general restrictions relating to holidays; however, the clerk will want to check the legislation governing the required notice carefully. He will also benefit in a public relations sense if he establishes deadlines that do not fall on Saturday or holidays. Care should also be taken to establish deadlines clearly in terms of calendar dates and time of day.

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